

REMARKS

Claim 20 has been amended, and claims 28-30, 33-42, and 45-54 have been cancelled. New claim 55 has been added. Claims remaining in consideration are claims 17-27, 31-32, 43-44, and 55.

New claim 55 is a combination of the subject matter contained in original claims 17 and 20. Therefore, it is respectfully submitted that a new search is not required. Moreover, because the subject matter of claim 20 has been indicated as allowable, new claim 55 is also believed to be in condition for allowance.

I. Amendments Unrelated to Patentability

The Office Action indicates that claims 20-27 contain allowable subject matter. In response, claim 20 has been rewritten in independent form. Because claim 20 is now an independent claim and claims 21-27 depend from claim 20, claims 20-27 are believed to be in condition for allowance.

Further, claims 20-27 are respectfully submitted as being entitled to all equivalent method steps. Applicant has merely rewritten the subject matter of claim 20 in a different format and has not narrowed the original scope of claims 20-27. Therefore, Applicant submits he is entitled to the claimed invention and all equivalents.

II. Double Patenting Rejection

The Office Action rejected claims 17-27, 31-32, and 43-44 under the judicially created doctrine of obviousness-type double patenting. In response, Applicant provides hereto a terminal disclaimer.

III. Priority

The Office Action acknowledges that the applicant claims the benefit of Application No. 09/185,310, which claims the benefit of Application No. 60/064,879. The Office Action also indicates that the earliest effective filing date of the claimed invention is May 22, 2000. In response, Applicant directs the Examiner's attention to page 1, lines 5-7 of the Specification wherein Applicant claimed priority to Application No. PCT/US99/09414 ('414 Application) filed 29 April 1999 and which named the United States as a designated country. MPEP §201.11(a) clearly indicates that such a claim of priority is permissible. It is submitted that the '414 Application more than adequately supports the claimed subject matter, including the administration of a 5HT agonist as an anti-migraine medication. As such, the earliest effective filing date of the application should be April 29, 1999.

IV. Claim Rejections

The Examiner has rejected Claims 17-19, 31-32, and 43-44 as being anticipated under 35 U.S.C. §102(e) by U.S. Patent Nos. 6060499 and 6,585,458 ('499 and '458 Patents), both of which are issued to Plachetka. In response, Applicant traverses the rejection because the '499 and '458 patents do not teach every element of the claimed invention.

The Office Action alleges that the '458 patent teaches a treatment of migraine relief during the "aura" phase of a migraine. The Office Action further states, "[i]t is noted that the aura is a typical prodromal symptom of migraine . . ." These statements are not entirely correct.

As noted on pages 1, line 28 through page 2, line 2 of Applicant's Specification:

Migraine sufferers sometimes get a warning signal before the onset of the headache phase of a migraine. The warning signals apparent to the migraineur are classified as aura. The period of aura is

preceded by a period classified as prodromal or premonitory period. The periods of aura, prodrome and premonitory are pre-headache.

(Emphasis added.) Several items are important to note. First, “aura” and “prodrome” are time periods, or phases, a migraineur experiences prior to a headache. These phases are not symptoms in themselves. Second, the “prodrome” phase occurs before the “aura” phase. For obvious reasons, a migraineur would prefer to identify the onset of a migraine as early as possible.

To anticipate, the reference must teach each and every element of the claimed invention. As for independent claim 17, the cited references do not teach the combination of “determining *prodromal* symptoms” and “administering a migraine headache phase-preventing amount of 5HT agonist.” Similarly, claim 18 provides “a 5HT1 agonist as active ingredient for administration during the *prodrome* phase of migraine,” which is not taught by the references. Finally, the cited references do not teach “determining *prodromal* symptoms of migraine; and administering an anti-migraine medication” as provided in claim 19. Because the cited references do not teach each and every element of independent claims 17-19, the cited references cannot anticipate these claims. It is respectfully requested that this claim rejection be withdrawn.

V. Conclusion

Applicant respectfully submits that the independent claims are allowable over the prior art of record, including the cited references. For similar reasons, and for the additional reasons set forth above, Applicant urge that the dependent claims are also allowable.

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and

complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,



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